

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:)	
)	Docket No. 08-00012
REQUEST OF CHATTANOOGA GAS)	
COMPANY FOR APPROVAL OF)	
ASSET MANAGEMENT AGREEMENT)	
)	

CONSUMER ADVOCATE'S REPLY BRIEF

Robert E. Cooper, Jr., the Attorney General and Reporter for the State of Tennessee, through the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate"), respectfully submits this reply brief in response to the brief of Chattanooga Gas Company ("CGC").

The Consumer Advocate disagrees with CGC's argument that the best way for the Tennessee Regulatory Authority ("TRA") to analyze the contract in the current matter is to ignore the provisions of the contract and to disregard the concerns raised by anyone who actually considers any problems with the provisions of the contract. Regardless of what action the TRA decides to take regarding the contract, the TRA should base its decisions on an analysis of the contract, including the specific concerns raised by the Consumer Advocate. CGC failed to address any of the issues raised by the Consumer Advocate, including the confidentiality issue, which is not even a provision of the contract.

According to CGC's brief, "The CAPD has set forth issues that would change the contract that CGC placed out for bid and require a re-negotiation of the agreement and the opportunity for the new asset manager to withdraw from the agreement." (CGC's brief, page 4). There are at

least two problems with this argument. One problem is that the contract itself contemplates decisions by the TRA that affect the contract, and another problem is that the contract has so many ways for the parties to attempt to terminate the contract that one more way adds little additional risk.

The contract says, “Asset manager shall comply with all Tennessee Regulatory Authority (“TRA”) orders.” [Contract, page 5, ¶ 2(c)]. The contract also says, “The Agreement is subject to all present and future valid orders, rules, and regulations of any regulatory body having jurisdiction.” (Contract, page 17, ¶ 21). Furthermore, the contract says, “The Parties further agree that they will carry out their respective obligations hereunder, in compliance with all valid and existing laws, orders, rules or regulatory requirements currently in existence or which may be enacted in the future.” (Contract, page 17, ¶ 21). Thus, the contract explicitly contemplates present and future TRA orders that affect the contract.

CGC’s argument also contradicts the Severability provision in the contract (Contract, page 8, ¶ 9).

If any provision of this Agreement is determined to be invalid, illegal or otherwise unenforceable for any reason by a court or regulatory authority of competent jurisdiction, and in the event that the overriding purpose of this Agreement is not frustrated by such determination, the remaining terms and conditions of this Agreement shall remain in full force and effect to the fullest extent permitted by law. In the event this Agreement remains in full force and effect, the Parties agree to make a good faith effort to replace, modify or amend the affected provisions. The obligation to perform all of the terms and conditions shall remain in effect regardless of the performance of any invalid term by the other Party.

Although it is true that CGC has drafted the contract so that it can attempt to terminate

the contract for any TRA action that CGC determines “in its sole discretion” to be “unfavorable,” [Contract, page 13, ¶ 18.1(f)], it is also true that there are many other ways for the parties to attempt to terminate the contract. Pages 13 and 14 of the contract provide numerous ways for the parties to attempt to terminate the contract. Additionally, the contract says, “CGC, upon written notice to the Asset Manager, may at any time demand that Asset Manager discontinue its management of the Assets that are the subject of this Agreement for any reason including, but not limited to, an Order by the TRA directing CGC to discontinue this Agreement.” (Contract, page 9, ¶ 11). Thus, CGC has drafted the contract so that it can attempt to terminate the contract at any time for any reason.

Furthermore, this same provision, (Contract, page 9, ¶ 11), makes clear that the contract itself contemplates the right of the TRA to discontinue the contract prior to the expiration of the initial three-year term or prior to the expiration of the extended seven-year term. The Consumer Advocate does not know at this time whether what occurs in TRA docket number 07-00224 will cause the Consumer Advocate to ask for any changes to the contract prior to the expiration of the initial three-year term or prior to the expiration of the extended seven-year term, but at this time the Consumer Advocate does not waive its right to do so. This consideration and the specific concerns raised about some of the provisions in the contract are why the Consumer Advocate has declined to agree with CGC’s effort to achieve unconditional approval of the contract by the TRA.

CGC also argues, “CGC continues to believe that a subsequent contract will result in significantly less net benefit for CGC’s customers.” (CGC’s brief, page 4). However, CGC does not provide any factual basis for this belief in its brief. The issues that the Consumer Advocate

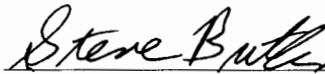
has raised are not material to the actual functioning of the asset manager on a day-to-day basis. There is no factual basis for the parties to the contract to impose financial penalties against consumers based on the concerns raised by the Consumer Advocate about the contract or based on any potential TRA action related to those concerns. This statement by CGC could be interpreted as a signal to the asset manager, which is an affiliate of CGC, to attempt to decrease its bid significantly in the event that CGC fails to achieve unconditional approval of the contract by the TRA.

The Consumer Advocate objects to CGC's injection of the substance of settlement negotiations into its brief. See Tenn. R. Evid. Rule 408. CGC said, "After attempting to resolve the differences, no agreements could be reached as the CAPD insisted that CGC change the terms of the contract that was issued as part of the RFP and was the basis for the bids received." (CGC's brief, page 4). However, given that CGC has injected the substance of settlement negotiations into its brief, the Consumer Advocate responds that agreement could not be reached, because CGC insisted that any change to any provision of the contract would cause the asset manager to attempt to reject the contract. It is significant that the Cooperation provision, (Contract, page 10, ¶ 14), is for the benefit of CGC only, and it is illogical to argue that a change to that provision would cause the asset manager to attempt to reject the contract. In any event, the Consumer Advocate reiterates that CGC's injection of the substance of settlement negotiations into its brief is inappropriate, and the TRA should not allow such extraneous comments to distract it from the substantive issues. See Tenn. R. Evid. Rule 408.

In conclusion, the contract explicitly contemplates that the TRA might enter orders in the present or in the future affecting the contract and explicitly states that the parties to the contract

are bound by such orders. (Contract, page 17, ¶ 21). This provision and the Severability provision quoted above, (Contract, page 8, ¶ 9), provide the TRA a basis within the contract to issue orders affecting the contract without causing CGC to have to renegotiate the entire contract. Although it is true that the parties to the contract could use such a TRA order to attempt to terminate the contract, it is also true that CGC has drafted the contract so that it can attempt to terminate the contract at any time for any reason.

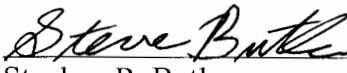
Respectfully submitted,



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Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served via first-class U.S. Mail, postage prepaid, electronic mail, or hand delivery, upon the parties of record in this case on the 22nd day of February, 2008.



Stephen R. Butler
Assistant Attorney General